BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against Ashvin C. Pandya, M.D. Physician's and Surgeon's License No. A45684 Respondent.	Case No. 800-2016-023790

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 13, 2020.

IT IS SO ORDERED: July 14, 2020.

MEDICAL BOARD OF CALIFORNIA

Kristina Lawson

Kristina D. Lawson, J.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ASHVIN C. PANDYA, M.D.** **2347 Cheyenne Dr.** **Bishop, CA 93514** **Physician's and Surgeon's Certificate** **No. A 45684** Respondent.	Case No. 800-2016-023790 OAH No. 2019070782 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Michael C. Brummel, Deputy Attorney General.

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2. Respondent Ashvin C. Pandya, M.D. (Respondent) is represented in this proceeding by attorney Edward O. Lear, whose address is: 5200 West Century Boulevard, Suite 345, Los Angeles, CA 90045.

3. On or about January 9, 1989, the Board issued Physician's and Surgeon's Certificate No. A 45684 to Ashvin C. Pandya, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-023790, and will expire on May 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-023790 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 10, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-023790 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-023790. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2016-023790, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case or factual basis with respect to the charges and allegations in Accusation No. 800-2016-023790, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. A 45684 to disciplinary action. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 800-2016-023790 shall be deemed true, correct and fully admitted by respondent for purposes of that proceeding or any other licensing proceeding involving respondent in the State of California.

11. ACKNOWLEDGMENT. Respondent acknowledges the Disciplinary Order below, requiring the disclosure of probation pursuant to Business and Professions Code section 2228.1, serves to protect the public interest.

12. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

13. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal

action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 45684 issued to Respondent Ashvin C. Pandya, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for seven (7) years on the following terms and conditions:

1. PATIENT DISCLOSURE. Before a patient's first visit following the effective date of this order and while the respondent is on probation, the respondent must provide all patients, or patient's guardian or health care surrogate, with a separate disclosure that includes the respondent's probation status, the length of the probation, the probation end date, all practice restrictions placed on the respondent by the board, the board's telephone number, and an explanation of how the patient can find further information on the respondent's probation on the respondent's profile page on the board's website. Respondent shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure. Respondent shall not be required to provide a disclosure if any of the following applies: (1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy; (2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities; (3) Respondent is not known to the patient until immediately prior to the start of the visit; (4) Respondent does not have a direct treatment relationship with the patient.

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2. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. PROFESSIONAL BOUNDARIES PROGRAM. Within 60 calendar days from the effective date of this Decision, Respondent shall enroll in a professional boundaries program approved in advance by the Board or its designee. Respondent, at the program's discretion, shall undergo and complete the program's assessment of Respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The program shall evaluate Respondent at the end of the training and the program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire program not later than six (6) months after Respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on Respondent's performance in and evaluations from the assessment, education, and training, the program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with program recommendations. At the completion of the program, Respondent shall submit to a final evaluation. The program shall provide the results of the evaluation to the Board or its designee. The professional boundaries program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

The program has the authority to determine whether or not Respondent successfully completed the program.

A professional boundaries course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

If Respondent fails to complete the program within the designated time period, Respondent shall cease the practice of medicine within three (3) calendar days after being notified by the Board or its designee that Respondent failed to complete the program.

4. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all

psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

5. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist with any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

6. THIRD PARTY CHAPERONE. During probation, Respondent shall have a third party chaperone present while consulting, examining or treating female patients. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its designee for prior approval name(s) of persons who will act as the third party chaperone.

If Respondent fails to obtain approval of a third party chaperone within 60 calendar days of

the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a chaperone is approved to provide monitoring responsibility.

Each third party chaperone shall sign (in ink or electronically) and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party chaperone.

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient initials, address and telephone number; 2) medical record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

Respondent is prohibited from terminating employment of a Board-approved third party chaperone solely because that person provided information as required to the Board or its designee.

If the third party chaperone resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name of the person(s) who will act as the third party chaperone. If Respondent fails to obtain approval of a replacement chaperone within 30 calendar days of the resignation or unavailability of the chaperone, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement chaperone is approved and assumes monitoring responsibility.

Respondent shall provide written notification to Respondent's patients that a third party chaperone shall be present during all consultations, examination, or treatment female patients. Respondent shall maintain in the patient's file a copy of the written notification, shall make the

notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation.

7. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

8. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

9. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

10. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

11. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and

residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice ,Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

12. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall

comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

14. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

15. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have

continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

16. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

17. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

18. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2016-023790 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Edward O. Lear. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 05/28/2020 Ashvin Pandya, MD

ASHVIN C. PANDYA, M.D.
Respondent

I have read and fully discussed with Respondent Ashvin C. Pandya, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5/29/2020 E Lear

EDWARD O. LEAR
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

DATED: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

MICHAEL C. BRUMMEL
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Edward O. Lear. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: _____ _____

ASHVIN C. PANDYA, M.D.
Respondent

I have read and fully discussed with Respondent Ashvin C. Pandya, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____ _____

EDWARD O. LEAR
Attorney for Respondent

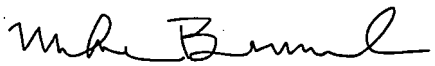
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

DATED: May 29, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General



MICHAEL C. BRUMMEL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-023790

XAVIER BECERRA
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 10 2019
BY: ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **Ashvin C. Pandya, M.D.** **2347 Cheyenne Dr.** **Bishop, CA 93514** **Physician's and Surgeon's Certificate No. A 45684,** Respondent.	Case No. 800-2016-023790 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about January 9, 1989, the Medical Board issued Physician's and Surgeon's Certificate Number A 45684 to Ashvin C. Pandya, M.D. (Respondent). The Physician's and

Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2020, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provision of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board."

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

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5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

6. Section 2225.5 of the Code states:

"(a) (1) A licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

"(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 30th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. For health care facilities that have electronic health records, failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records.

"(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up

to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

"(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

"(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

"(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

"(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six

months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) and shall be reported to the State Department of Public Health and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

"(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

"(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

"(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board.

"(g) For purposes of this section, a ›health care facility= means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code."

7. Section 2262 of the Code states:

"Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

"In addition to any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars ($500) for a violation of this section."

8. Section 2266 of the Code states:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

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9. Section 729 of the Code states:

"(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

"(b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor is a public offense:

"(1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

"(2) Multiple acts in violation of subdivision (a) with a single victim, when the offender has no prior conviction for sexual exploitation, shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

"(3) An act or acts in violation of subdivision (a) with two or more victims shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars ($10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

"(4) Two or more acts in violation of subdivision (a) with a single victim, when the offender has at least one prior conviction for sexual exploitation, shall be punishable by

imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars ($10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

"(5) An act or acts in violation of subdivision (a) with two or more victims, and the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars ($10,000).

"For purposes of subdivision (a), in no instance shall consent of the patient or client be a defense. However, physicians and surgeons shall not be guilty of sexual exploitation for touching any intimate part of a patient or client unless the touching is outside the scope of medical examination and treatment, or the touching is done for sexual gratification.

"(c) For purposes of this section:

"(1) "Psychotherapist" has the same meaning as defined in Section 728.

"(2) "Alcohol and drug abuse counselor" means an individual who holds himself or herself out to be an alcohol or drug abuse professional or paraprofessional.

"(3) "Sexual contact" means sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

"(4) "Intimate part" and "touching" have the same meanings as defined in Section 243.4 of the Penal Code.

"(d) In the investigation and prosecution of a violation of this section, no person shall seek to obtain disclosure of any confidential files of other patients, clients, or former patients or clients of the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

"(e) This section does not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

"(f) If a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in a professional partnership or similar group has sexual contact with a patient in violation of this section, another physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in the partnership or group shall not be subject to action under this section solely because of the occurrence of that sexual contact."

10. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos* v. *Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law."

FIRST CAUSE FOR DISCIPLINE

(Sexual Misconduct)

11. Respondent has subjected his Physician's and Surgeon's Certificate No. A 45684 to disciplinary action under section 2227, as defined by section 729, of the Code, in that he engaged in sexual misconduct. The circumstances are as follows:

12. Respondent is Board Certified in Family Medicine and operates a solo family practice medical office in Bishop, California. The clinic is typically open Monday through Thursday from 10:00 a.m. to 5:00 p.m. Respondent's office staff consists of two-part time medical assistants and his wife, who is the office manager. Respondent is on call for his patients at all times. When the office is closed, patient messages are relayed to his cell phone, which he uses to follow up directly with patients.

13. Patient A[1] presented to Respondent for primary care for approximately 11 years, continuing through June 14, 2016. Patient A's history included hypothyroidism, hypertension, cystic breasts, anxiety, depression and recurrent bronchitis. Typically, Patient A would only make appointments to see Respondent if she was sick or in need of laboratory work. Respondent also provided gynecological care for Patient A, performing breast exams each year and pelvic exams every couple of years.

14. On or about March 8, 2016, Patient A, a 43-year-old female patient, presented to Respondent for a follow up visit related to her illness. Respondent documented her vital signs, and noted that she was experiencing soreness in her mouth, cough, nasal discharge, heaviness in her chest, and difficulty taking deep breaths. Respondent ordered a series of lab tests including a throat culture and thyroid tests. The labs revealed that Patient A was suffering from 'B pertussis IgG Ab,' commonly referred to as whooping cough.

15. On or about April 2, 2016, Patient A, presented to the emergency room complaining of increased pain and difficulty breathing related to her pertussis. It was believed, but never confirmed, that Patient A had suffered broken or fractured ribs related to her illness. Patient A was treated and discharged with a prescription for 15 pills of Vicodin. Patient A had taken

[1] To protect the privacy of patients, individual names are not identified in this Accusation.

Vicodin more than a year prior, and didn't like the way it made her feel. As a result of that experience, Patient A avoids taking Vicodin, and doesn't recall whether she ever took the 15 pills prescribed by the hospital. Patient A's CURES[2] report shows that prior to April 2, 2016, she had not received a prescription from any provider for an opiate since November 15, 2014.

16. At one of Patient A's visits between March and June of 2016, Respondent gave Patient A sixty dollars cash as a gift because she was experiencing financial difficulties. Respondent told Patient A to take the money because he knew that she needed it, and that she didn't have to pay him back. Patient A protested that she didn't want to take the money because she could not pay him back, but Respondent assured her it was a gift and not to worry about it. During another visit, Respondent told Patient A that he was not going to charge for the visit, but Respondent's wife, the office manager, mailed an invoice for the visit by mail requesting payment. Respondent called Patient A and told her that he wanted her to come into the office to talk to her about the bill for the prior visit. Patient A told him that she didn't need to come into the office, and that she would just pay the bill.

17. On or about May 24, 2016, Patient A presented to Respondent with symptoms related to pertussis and high blood pressure. Patient A was suffering from congestion, green phlegm, and other related symptoms. Respondent wrote multiple prescriptions for Patient A, none of which were for controlled substances. Respondent told her that he and his wife were "having problems," and "going through something similar." Patient A stated that it was abnormal for Respondent to provide details about his personal life, and she was not interested in learning about his personal life. Respondent offered Patient A $80 to cover the cost of the bill from her prior visit. Respondent didn't want his wife to learn that he was paying for the visit, so he asked Patient A to put it in an envelope and put it under the door to the office. Patient A declined and provided Respondent with an $80 personal check for the visit.

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[2] Controlled Substance Utilization Review and Evaluation System 2.0 (CURES) is a database of Schedule II, III and IV controlled substance prescriptions dispensed in California serving the public health, regulatory and oversight agencies and law enforcement. CURES 2.0 is committed to the reduction of prescription drug abuse and diversion without affecting legitimate medical practice or patient care.

18. On or about June 14, 2016, at 5:34 p.m., Respondent called Patient A from his cell phone and asked her to come to his office to get orders for lab work related to her thyroid and check her blood pressure. Patient A was not alarmed by the personal phone call from Respondent, as he typically calls his patients directly. As she had received other calls from him in the past, she knew it was Respondent calling from the caller identification on her cell phone. The call lasted approximately 3 minutes, and was verified by Patient A's cell phone records. Patient A worked a short distance from Respondent's medical office and agreed to come over on her way home from work. Patient A had been to Respondent's office after hours previously, and Respondent was usually in the office with his wife. Patient A parked in the parking lot behind the medical office, and entered in through the back door of the building.

19. Patient A was greeted by Respondent, who was alone at the office. Patient A did not see any other staff or Respondent's wife in the building at any time during the office visit. Respondent recommended that she allow him to check her lungs while she was in the office. Respondent led her to an examination room, and began to examine Patient A's lungs. While examining her lungs, Respondent asked if she had obtained her mammogram yet. Patient A told him that she had not, but planned to get one on Friday when she had another appointment for an MRI. Respondent suggested that he perform a breast exam today, given her history of cystic breasts. Patient A allowed Respondent to perform a breast examination. Respondent lifted her shirt, examined one breast with his hands, followed by the other breast. Immediately after examining her second breast with his hands, and without warning, Respondent placed his mouth over her nipple and began to suck. Respondent continued to suck on Patient A's breast for several seconds, while Patient A was in shock. Patient A pushed Respondent away and shouted, "No, no, no, no!" Respondent said, "Please forgive me, please forgive me. I'm sorry. You're so beautiful. I'm sorry. I'm sorry, please forgive me." Respondent reached into his pocket to grab money and attempted to hand it to her saying, "Please." Patient A was offended, refused his offer of money, and asked for her thyroid lab orders. Respondent was nervous, and his hands were abnormally shaking as he handed her the lab order slip. Respondent provided Patient A with the order for her thyroid laboratory tests, and told Patient A "I'm so sorry."

20. Respondent engaged in an act of sexual contact with Patient A, which constitutes sexual misconduct.

SECOND CAUSE FOR DISCIPLINE

(Dishonesty or Corruption)

21. Respondent has subjected his Physician's and Surgeon's Certificate No. A 45684 to disciplinary action under section 2227, as defined by section 2234, subdivision (e), of the Code, in that he committed an act or acts involving dishonesty or corruption that was substantially related to the qualifications, functions, or duties of a physician and surgeon, which constitutes unprofessional conduct.

22. The circumstances set forth above in paragraphs 12 through 19, are reincorporated and re-alleged as if set forth fully herein. Additional circumstances are as follows:

23. Patient A was distraught and visibly upset by the time she returned home the night of June 14, 2016. Patient A immediately confided in a friend, but didn't initially want to share the details of Respondent's conduct with her family. Her sons were concerned for her and demanded to know what happened, but she was scared to tell anyone what Respondent had done. Patient A eventually confided in her sons, and agreed to report the matter to the Bishop Police Department (BPD) in the morning.

24. Respondent's medical records for Patient A reflect a visit with Patient A that occurred on June 14, 2016. Respondent wrote, "BP 138/90, continue current RX, Pt requested Vicodin, I declined, she got upset and left, picked up her lab order." Following the note, Respondent signed the medical record. Respondent did not include any indication that there were any additional records, statements or addenda relevant to this visit. This was the only record of any form, related to the June 14, 2016, patient encounter, that Respondent provided to the Board's investigators in response to the subpoena for Patient A's records.

25. On or about June 15, 2016, prior to meeting with BPD Detectives, Patient A texted Respondent asking him to take responsibility for his misconduct. She wrote to Respondent, "Please save me the humiliation of having to go to the police, and turn yourself in. I trusted you." Respondent did not respond to her text, and did not report his misconduct to the police.

26. On or about June 15, 2016, Patient A visited Wild Iris[3], a victim advocate support center, to report Respondent's misconduct. A detective from BPD arrived at the Wild Iris office to take Patient A's statement. Patient A's interview was audio and video recorded by BPD Detectives. Patient A emphatically denied that she had or could be romantically involved with Respondent, and expressly denied any history of abusing drugs or seeking controlled substances from Respondent. Patient A agreed to assist the BPD Detectives by participating in recorded pretext calls[4] to Respondent as a part of the criminal investigation.

27. During the first pretext call, Respondent did not answer the phone.

28. During the second pretext call, Respondent answered the phone. Patient A identified herself by her first name. Respondent said, "Yeah, I'm sorry. I missed your call. And I was going to tell you that – um – are you still there?" Patient A confirmed that she was still on the line and could hear him. Respondent said, "I'm getting another call. Can I call you right back? Just a second okay? I'll call you right back."

29. During the next three pretext call attempts, Respondent didn't answer the phone.

30. On or about June 15, 2016 at 3:21 p.m., Respondent called Patient A from his cell phone. The call was verified by phone records and lasted approximately 2 minutes. Patient A was sitting alongside officers who were recording the conversation. Respondent said, "Hi [Patient A]. This is not the best way to ask, but I was going ask you – um – will you marry me once you get divorced from the other man?" Patient A said, "What? No. What are you talking about?" Respondent replied, "I'm so sorry. Uh – uh – you know we are going through a difficult time right now and – uh – I understand what you're going through and I'm extremely sorry. Okay?" Patient A replied, "Why would you do that to me though? I trusted you. You've been my doctor for a long time. And I – uh what...I don't – why – like, you sucked my breast? Why would you do that?" Respondent answered, "I – I – you know, I'm – I'm – I'm extremely sorry.

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[3] Wild Iris is a family counseling and crisis center dedicated to promoting a safer community by promoting and restoring the independence of persons affected by domestic violence, sexual assault and child abuse. They provide confidential services at no charge.

[4] A pretext phone call is an investigative tool that is often used by law enforcement during criminal investigations. It is a planned phone call between the victim of a crime and the suspect, monitored and recorded by law enforcement.

Okay? Thank you. And I'll call you back. I'm in the mountains right now. Okay?" Respondent then terminated the phone call.

31. On or about June 20, 2016, at approximately 8:15 a.m., Respondent was interviewed by BPD Detectives at his medical office. The entire interview was video and audio recorded. Respondent told BPD Detectives that he didn't know why they wanted to meet with him, but speculated that it was "because of the patient." Respondent went on to describe Patient A as a disgruntled, Vicodin seeking patient that was seeking retribution against him for refusing to prescribe her Vicodin. Respondent stated that she called him multiple times requesting prescriptions for pain killers, which he refused to provide. Respondent admitted that Patient A came by his office about one week prior, around 5:30 p.m. to pick up her lab orders. Respondent admitted that there were no other people present in the building when Patient A came to his office. According to Respondent, Patient A told him that she was under a lot of stress and asked him to check her blood pressure. Respondent contends that Patient A asked if he would marry her after she got divorced from her husband. Respondent states that he told her he couldn't marry her, because he was already married, then Patient A laughed and told him it was a joke. Respondent claimed that he refused to provide Patient A with Vicodin and explained that he didn't "prescribe Vicodin because it's an addicting drug." According to Respondent, Patient A accused him of calling her a drug addict and told him "...I'll make you pay for it."

32. In his interview with BPD Detectives, Respondent explained that he left Bishop to drive to his home in Orange County at approximately 2:00 p.m. on Wednesday, June 15, 2016. Respondent admitted to receiving several phone calls from Patient A during this time frame (Respondent did not know that the pretext calls were directed and recorded by BPD Detectives at the time he gave his statement). Respondent stated that he answered the phone, and told patient A that "It's not going to work talk [sic] to you when driving," then blocked her number. Respondent denied having any feelings for Patient A, and told BPD Detectives that he had nothing to hide and was being honest. BPD Detectives told Respondent that they did not believe he was being honest, because they already knew the answers to many of the questions that they

asked him. Respondent replied by immediately requesting an attorney "before I say anything else."

33. On or about June 20, 2016 at approximately 12:15 p.m., BPD Detectives met with Patient A to address the allegations Respondent made about her during his interview. Patient A reported that she had taken narcotics in the past related to a neck surgery, but was not currently taking any narcotics. Patient A reported that she didn't tolerate Vicodin, because she had taken it in the past and didn't like the way it made her feel. Patient A was upset, crying and offended by Respondent's allegation that she was seeking Vicodin from him. Patient A expressly refuted his claims and signed releases to allow investigators to obtain copies of her prescription records. Patient A's prescribing records reveal that she was not regularly receiving any prescriptions for opiates or controlled substances from any health care providers. On or about April 2, 2016, Patient A received a single prescription from the emergency room for 15 pills of Vicodin to treat pain related to her possibly broken ribs while suffering from whooping cough. This was the only prescription for any opiates that Patient A received during the prior 18 months, and Patient A was unable to remember if she even took the 15 prescribed Vicodin pills.

34. On or about January 18, 2017, Respondent provided an allegedly complete copy of Patient A's medical records to the Inyo County District Attorney for delivery to Patient A. The records were being delivered to Patient A to allow her to coordinate her care with her future medical providers. The records consisted of 179 pages, and are inconsistent with the medical records provided by Respondent to the Board. On the same day, Respondent sent a copy of Patient A's medical records for Patient A to the Board. The records delivered to the Board consisted of 71 pages, and contained a signed certification under penalty of perjury that Respondent had provided all records relating to Patient A from September 14, 2013 through June 14, 2016. Neither the records provided to the Inyo County District Attorney, nor the records provided to the Board, contained a two page handwritten note about the encounter with Patient A on June 14, 2016.

35. On or about June 28, 2018, Respondent participated in a subject interview with investigators working on behalf of the Board. Respondent admitted to investigators that he was

convicted of criminal battery in Bishop County Superior Court related to the incident that occurred with Patient A on June 14, 2016. Respondent reviewed the care and treatment provided to Patient A with investigators. Respondent explained that some of his medical records were kept electronically, while others were hand written by himself, medical assistants or his wife. Despite previously completing a certification under penalty of perjury that he had provided all records relating to Patient A from September 14, 2013 through June 14, 2016, Respondent arrived at the subject interview with two new pages of medical records. The newly produced records consist of a two page handwritten note purportedly created by Respondent within two hours after Patient A left his office on June 14, 2016. The two page handwritten note, produced by Respondent for the first time on or about June 28, 2018, is a self-serving fabrication.

36. Respondent's two page handwritten note is summarized as follows. It was the end of the day and Respondent was doing paperwork in his office. He heard a knock at the back door, opened it, and it was Patient A. Respondent claims that there was no prior phone call, and that he was not expecting Patient A to come to his office. Patient A stated that she was there to pick up her lab order, but asked him to go to her car so that she could show him a rash. Respondent claims that he was worried it was a chicken pox rash, so he followed Patient A to her car. Respondent claims that immediately upon entering Patient A's car, Patient A "lifted her top and thrust her breasts on my face. I was gasping for air, and was shocked. So I pushed her away from me, and she probably hit her head against the window." Respondent states that Patient A then complained to him that she had not had sex in some time, to which he responded, "that is very wrong, as I am your physician. And both of us are married." He then told her to move her car, and he would go to the office to get her lab order. Respondent returned to the office to get her lab order, then heard Patient A's voice from the examination room asking him to check her blood pressure. Respondent claims that he believed that Patient A might be under the influence of drugs, so he checked her blood pressure, and noted it in her medical records. Patient A then complained to him about life stressors including her pending divorce, and her back and hip pain. Respondent told her that he was sorry to hear about her divorce. Patient A then asked Respondent if he would marry her after she got divorced. Respondent claims that he was shocked, and

rejected Patient A's marriage proposal. Patient A then asked him for Vicodin. Respondent explains that he refused to provide her Vicodin, and told her that it is an addictive drug. Respondent then told Patient A that he was terminating her care, and that she needed to find another doctor in the next thirty days. According to Respondent, Patient A believed that he called her a drug addict, got angry, and left the building telling Respondent that she would make him "pay for this."

37. Respondent, now aware that he was recorded during the BPD Detectives' pretext calls, provided a new characterization of the calls. Respondent told Board investigators that Patient A called him on June 16, 2016, while he was driving to Dana Point. Respondent admits that the first time she called, he didn't pick up, but claims he answered the phone the second time. According to Respondent, Patient A asked for Vicodin, and threatened to kill herself. Respondent claims he told her to go to the emergency room immediately, and hung up the phone. These claims are not substantiated in the recorded calls, and are false. Then, despite Patient A's alleged threat of suicide, Respondent explained that he called her back, and asked her to marry him. Respondent claims that he was being sarcastic, because he was angry that she had asked him to marry him the day prior, just to flatter him into prescribing narcotics. Respondent claims that he had trouble hearing anything after that as he was entering the mountain range, and hung up the phone.

38. Respondent told Board investigators that Patient A had never asked for narcotics before. Respondent admitted that Patient A had never asked him for any money in the past. Respondent claimed that he had never given her any money or gifts in the past. According to Respondent, other than Patient A thrusting her breasts upon him, he never willingly touched any other part of her body, or placed his mouth on her breast at any time.

39. Respondent did not mention the newly produced records to BPD Detectives during the criminal investigation. Respondent did not provide the new medical records to Patient A when he was ordered to provide her with a complete copy of her medical record in August, 2016, as a part of the criminal prosecution. Respondent did not provide the newly produced medical records when he completed a certification under penalty of perjury that he provided all of the

relevant records to the Board pursuant to the Board's investigation. Respondent's only explanation for his failure to provide these highly relevant, self-serving, allegedly exculpatory documents until two years after the event, was that they were "very confidential" and he "didn't want to do it until I spoke with my attorney."

40. By falsely stating in his medical record that Patient A sought Vicodin; by providing the Bishop Police Department with a false statement regarding his June 14, 2016 encounter with Patient A, and a false statement regarding his June, 15, 2016, telephone conversation with Patient A; by providing Board investigators with false statements regarding both the June 14, 2016 encounter and the June 15, 2016 telephone call; and by providing Board investigators with a fabricated two-page note purporting to be a part of Patient A's medical record, Respondent committed acts of dishonesty and corruption that were substantially related to the qualifications, functions, or duties of a physician and surgeon.

THIRD CAUSE FOR DISCIPLINE

(False Medical Records)

41. Respondent has subjected his Physician's and Surgeon's Certificate No. A 45684 to disciplinary action under section 2227, as defined by section 2262, of the Code, in that he altered, modified or created false medical records, with fraudulent intent, which constitutes unprofessional conduct. The circumstances are set forth above in paragraphs 12 through 19, and 23 through 39, which are reincorporated and re-alleged as if set forth fully herein.

FOURTH CAUSE FOR DISCIPLINE

(Gross Negligence)

42. Respondent has subjected his Physician's and Surgeon's Certificate No. A 45684 to disciplinary action under section 2227, as defined by section 2234, subdivision (b), of the Code, in that committed gross negligence in the care and treatment of Patient A.

43. The circumstances and allegations set forth above in paragraphs 12 through 19, and 23 through 39, are reincorporated and re-alleged as if set forth fully herein. Additional circumstances are as follows:

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Departures

44. Respondent performed an unsupervised breast examination on Patient A. During the breast examination, Respondent proceeded to suck on her right breast. Respondent's sucking of Patient A's breast was for the purpose of sexual arousal, gratification or abuse. Respondent inappropriately touched Patient A, which constitutes an extreme departure from the standard of care.

45. Respondent violated the sanctity of the physician-patient relationship with Patient A on several occasions. Respondent shared personal information with Patient A regarding his dissatisfaction in his own marriage. Respondent provided Patient A with unsolicited gifts of money. Respondent lured Patient A to his office for an examination after normal business hours. Respondent used Patient A's history of fibrocystic change and her past due mammogram status to gain access to her exposed breasts. Respondent used Patient A's medical history to gain access to her exposed breast, then proceeded to suck on her breast. Respondent repeatedly told Patient A that he was sorry for what he did, and that she was very beautiful. During the criminal investigation, Patient A confronted Respondent with his sexual misconduct on a recorded telephone call. In response, Respondent asked Patient A if she would marry him after she finalized her divorce. Respondent repeatedly engaged in conduct that violated the appropriate boundaries of the physician-patient relationship. Each of these actions constitutes a separate and distinct extreme departure from the standard of care.

46. Respondent documented that Patient A sought pain medication, specifically Vicodin, from him on June 14, 2016. Respondent's claim is inconsistent with his prior prescribing, the balance of Patient A's medical record, and Patient A's statements to law enforcement. During the Board's investigative interview, Respondent claimed that Patient A was seeking Vicodin from him, that he refused to provide it, and that he documented this in the medical records. Respondent characterized Patient A as a drug addict who falsified claims of sexual misconduct as retaliation for his refusal to provide her with a prescription for Vicodin. At the subject interview, Respondent provided two pages of new medical records detailing his most recent version of events, in which he characterizes Patient A as the aggressor. In August of 2016 as a part of the

criminal prosecution, Respondent provided Patient A with a complete copy of her medical record so that she could give them to her new physician. In January of 2017, Respondent signed a declaration of penalty of perjury that he provided the Board with a complete copy of the medical records for Patient A from September 4, 2013 through June 14, 2016. Respondent's production of records to Patient A and to the Board did not include the two-page statement that appeared for the first time at his subject interview. Respondent did not provide this purported medical record until the subject interview because the two-page note constituted false medical records, fabricated long after the events of June 14, 2016.

47. Respondent altered or modified Patient A's medical records with fraudulent intent, or created a false medical record with false intent, which constitutes an extreme departure from the standard of care.

FIFTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

48. Respondent has subjected his Physician's and Surgeon's Certificate No. A 45684 to disciplinary action under section 2227, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts of negligence in the care and treatment of Patient A.

49. The circumstances and allegations set forth above in paragraphs 12 through 19, and 23 through 39, are reincorporated and re-alleged as if set forth fully herein.

SIXTH CAUSE FOR DISCIPLINE

(Conviction of a Crime)

50. Respondent has subjected his Physician's and Surgeon's Certificate No. A 45684 to disciplinary action under section 2227, as defined by sections 490, 2234 (a), and/or 2234, subdivision (f), in that he was convicted of a crime substantially related to the qualifications, functions, or duties of a physician or surgeon. The circumstances are set forth above in paragraphs 12 through 19, and 23 through 39, which are reincorporated and re-alleged as if set forth fully herein. Additional circumstances are as follows:

51. On or about June 20, 2016, at approximately 3:01 p.m., Respondent was arrested by officers from the Bishop Police Department. Respondent invoked his right to counsel, and

declined to provide a statement. Respondent was arrested on a felony charge of Penal Code 243.4(c), commonly referred to as sexual battery.

52. On or about June 20, 2016, in the Superior Court of California, in a criminal proceeding entitled *The People of the State of California vs. Ashvin Chandrashanker Pandya*, Case No. MBCRF 16-59535, Respondent was charged with one violation of Penal Code sections 243.4(c) unlawfully touching an intimate part of Patient A on June 14, 2016.

53. On or about October 24, 2017, in a criminal proceeding entitled *The People of the State of California vs. Ashvin Chandrashanker Pandya*, Case No. MBCRF 16-59535, a Joint Stipulation and Order was issued pursuant to Penal Code section 23, ordering Respondent to utilize a third party chaperone when treating or examining any female patients.

54. On or about February 21, 2017, in a criminal proceeding entitled *The People of the State of California vs. Ashvin Chandrashanker Pandya*, Case No. MBCRF 16-59535, Respondent was convicted upon his plea of nolo contendere to a charge of Penal Code section 242/243(a) (battery), a misdemeanor. The Court sentenced Respondent to three (3) years' probation and ordered him to serve 30 days in jail, stayed; to complete 120 hours of community work service, permanently stayed upon completion of community work service within 24 months; pay fines and fees; complete a physician's boundaries course; follow the rules and regulations of the Medical Board; and ordered him not to have any contact with the victim (Patient A).

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

55. Respondent has subjected his Physician's and Surgeon's Certificate No. A 45684 to disciplinary action under section 2227, as defined by section 2266, in that he failed to maintain adequate and accurate medical records related to Patient A. The circumstances are set forth above in paragraphs 12 through 19, and 23 through 39, which are reincorporated and re-alleged as if set forth fully herein.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 45684, issued to Ashvin C. Pandya, M.D.;

2. Revoking, suspending or denying approval of Ashvin C. Pandya, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Ashvin C. Pandya, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: June 10, 2019

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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